IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.1107/2007

Reserved on: 20.11.2007

Decided on.29.11.2007

Sanjeev Kumar. **…Petitioner**

Versus

Director (Bee Keeping) & others. **…Respondents**

Coram

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?[1]*. No.*

For the petitioner : Mr. M.L. Sharma, Advocate.

For the respondents: Ms. Meenakashi Sharma, Deputy Advocate General.

Rajiv Sharma, J. (oral)

A challenge has been laid by way of this petition to the award passed by the Labour Court-cum-Industrial Tribunal, Shimla dated 10.3.2006 in reference No. 102 of 2002.

The brief facts necessary for the adjudication of this petition are that the State Government had made the following reference to the Labour Court-cum-Industrial Tribunal, Shimla:

> **"Whether the termination of the services of Shri Sanjeev Kumar son of Som Dutt by the Incharge, Bee Keeping Centre, Godna, P.O. Deha, District Shimla, H.P. w.e.f. 20.7.1995, without any notice and compensation is proper and justified? If not, what salary, service benefits, compensation the above workman is entitled to?"**

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

In sequel to the reference made by the State Government, the workman had filed his statement of claim before the Labour Court mentioning therein that he was engaged as a daily wages Beldar with effect from 26.3.1994 to 25.7.1995 and his retrenchment was effected in contravention of the mandatory provisions of the Industrial Disputes Act, 1947. The employer had filed the reply to the statement of claim. The workman had filed detailed rejoinder to the reply filed by the employer. The Labour Court on the basis of the evidence led by the parties rejected the claim of the workman on 10.3.2006.

Mr. M.L. Sharma, Advocate appearing on behalf of the workman had strenuously argued that the workman had completed 240 days preceding his retrenchment i.e. 25.7.1995 and was entitled to the protection of section 25-F of the Industrial Disputes Act (hereinafter referred to as the Act for brevity sake).

The learned Deputy Advocate General had supported the award dated 10.3.2006 passed by the Labour Court.

I have heard the learned counsel for the parties and perused the record.

The workman had appeared as a witness before the Labour Court. He had testified before the Labour Court that he was engaged as a Beldar on daily wage basis with effect from 26.3.1994 and he discharged his duties upto 25.7.1995. He was not permitted to join his duty after 25.7.1995 meaning thereby that he was retrenched with effect from 26.7.1995. He has testified before the Labour Court that he made representations to the authorities concerned on 10.12.1995, 9.5.1996, 10.1.1997, 20.9.1997 and 12.7.1998 for his re-engagement but the same were not addressed to. He had categorically stated before the Labour Court that he had completed 240 days during 1994-95 and experience

certificate was also issued in his favour by the Incharge and the copy of the same was placed on record as Ex.PJ. He had also placed on record the copy of attendance chart/muster-roll vide Ex.PK. He has given the instances of the workmen juniors to him, namely, Sudesh Pal and Ishwar Singh who were retained at the time of his retrenchment. On behalf of the employer, Shri M.D. Bhardwaj, Bee Keeping Development Officer had appeared before the Labour Court on 3rd March, 2005. He had admitted that no notice was issued to the workman at the time of his dis-engagement. He had denied the receipt of representation as referred to by the workman in his statement. Shri M.D. Bhardwaj had admitted that one Shri Sudesh Pal was still working in the Department.

The learned Deputy Advocate General had also referred to letter dated 12th July, 1995 on the basis of which the fictional breaks were given to the workman with effect from 26.7.1995 to 25.9.1995.

It is evident from the material placed on record that the petition and as per the contention raised before this Court that theworkman had completed 240 days preceding his retrenchment i.e. 26.7.1995. The workman was entitled at least to one month notice at the time of his disengagement or in lieu thereof, one month's salary. Shri M.D. Bhardwaj while appearing as witness on behalf of the employer had admitted that no notice was issued to the workman. The factum of junior persons being retained by the employer has also been admitted by the representative of the employer. The act of the employer to retain the persons junior to the workman i.e. Sudesh Pal and Ishwar Singh is in contravention of section 25-G of the Act. The issuance of letter dated 12th July, 1995 for giving fictional breaks to the workman and similarly situated workmen of two months has no bearing in the present case. The workman was entitled to the protection of section 25-F of the Industrial Disputes Act, 1947 since he

had completed 240 days in a block of 12 calendar months preceding his retrenchment. The workman was entitled to get the protection of section 25-G of the Industrial Disputes Act, 1947 since persons junior to him, namely, Sudesh Pal and Ishwar Singh were retained.

The finding recorded by the Labour Court to the effect that the workman had not proved his retrenchment is set aside.

Accordingly in view of the observations made hereinabove, the writ petition is allowed. The award dated 10.3.2006 is quashed and set aside. The retrenchment of the petitioner effected on 26.7.1995 is declared void ab initio and the petitioner is held entitled to re-engagement with consequential benefits of seniority alone to be counted for the purpose of retiral benefits. The respondents are directed to re-engage the workman within a period of 6 weeks from today.

There shall be no order as to costs.

(Rajiv Sharma), Judge

November 29, 2007
Awasthi